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6 IN THE UNITED STATES DISTRICT COURT

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10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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ALISE MALIKYAR and ROBERT
JACOBSEN,

No. C 07-03533 WHA

Plaintiffs,

v.

**FINAL SUMMARY OF
RECORDING**

JOHN SRAMEK, BERNADETTE
SRAMEK, HAROLD M. JAFFE, JOHN S.
SRAMEK AND BERNADETTE
SRAMEK REMOVABLE LIVING
TRUST AND DOES 1 TO 100, inclusive,

Defendants.

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For the benefit of the court of appeals, this is the district judge's summary of the recordings played in open court on June 15, 2009, from Exhibit 1, the alleged wiretap device. In accordance with usual practice, the court reporter did not attempt to transcribe the audio when played. The device will remain in evidence and be available on appeal and presumably could be played by the circuit judges. For the convenience of all, this memorandum will summarize what the Court heard. Counsel have been given an opportunity to review, object, and suggest improvements to a prior draft, although none was made.

There were four recordings on the device. According to the device readout, the first recording was dated May 5, 2007. It lasted approximately thirty seconds. It consisted of a telephone number being dialed with dial tones, and a operator message that the call could not be completed as dialed.

The second recording was dated May 6, 2007, and it lasted 24 minutes. There was an automated voice heard saying “One moment please.” The call, if there was one, did not appear to have been completed. That was followed with room noise, including clicks, paper shuffling, and occasional audible sighs. There were also nasal sounds, sniffling, sweeping sounds, a door closing and occasional clatter. There were a few sounds of handwriting scratching on paper. Then, there was a dial tone and three digits were dialed followed by an automated “We’re sorry” and a disconnection. Then there were more room noises, opening of drawers, and apparent sawing or sanding noises, and more nasal sniffling. A noise like someone tapping a pencil eraser on a desk was then heard. What sounded like an electric drill or electric grinder or background noise in a work shop came next. There was no music, conversation, or sounds of human interaction except for a sneeze by a woman, followed by a man saying “Gesundheit,” and a woman sneezing two more times. There were more shop noises, sanding noises, and a clatter. Then there was more nasal sniffling, light tapping, an audible sigh, walking on the floor, a door opening, and paper shuffling. A man was heard flipping through papers and saying “Oh, fuck you” and “You got to be fucking kidding me.” Lastly, there was an audible sigh, sounds of walking on the floor as if back-and-forth, clatter, and paper rattling. The overall impression was that a speaker phone was left on, after the uncompleted call, and that the device recorded room sounds for 24 minutes.

19 The third recording was dated May 6, 2007, and it lasted six minutes. The recording
20 almost entirely consisted of static that sounded like heavy rain. There were possibly very faint
21 voices halfway through, but totally undecipherable. There was clatter and then the static went
22 away. A honk-honk sound was heard followed by the sound of someone walking across a floor.
23 Lastly, there was clatter.

24 The final recording was dated July 3, 2007, and it lasted approximately thirty seconds.
25 Only static could be heard.

26 * * *
27 Overall, there was no apparent completed call.
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1 Both sides may further have until **THURSDAY, JUNE 25 AT NOON** to file any objections
2 to the accuracy or completeness of this summary.

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4 Dated: June 25, 2009.



5 WILLIAM ALSUP
6 UNITED STATES DISTRICT JUDGE
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